

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Cheema Investments, LLC,
Appellant,

v.

Kimball County Board of Equalization,
Appellee.

Case No: 17R 0051

Decision and Order Affirming the Decision
of the Kimball County Board of
Equalization

For the Appellant:

Kuldip Singh, Member,
Cheema Investments, LLC
Pro Se

For the Appellee:

David L. Wilson
Kimball County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in rural Kimball County. The parcel is improved with two houses and other farm buildings or outbuildings. The legal description of the parcel is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 2.

II. PROCEDURAL HISTORY

The Kimball County Assessor determined that the assessed value of the Subject Property was \$64,005 for tax year 2017. Cheema Investments, LLC (the Taxpayer) protested this assessment to the Kimball County Board of Equalization (the County Board) and requested an assessed valuation of \$15,000. The Kimball County Board determined that the taxable value of the Subject Property for tax year 2017 was \$64,005.¹

¹ Exhibit 1.

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on August 7, 2018. At the hearing, the parties stipulated to the receipt of exchanged exhibits.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.² When the Commission considers an appeal of a decision of a County Board of Equalization, a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."³

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁴

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷ The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.⁸

² See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

⁸ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”⁹ The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”¹⁰ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹¹

IV. VALUATION LAW

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹²

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”¹³ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁴ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

⁹ Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

¹⁰ Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

¹² Neb. Rev. Stat. §77-112 (Reissue 2009).

¹³ *Id.*

¹⁴ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁵ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁶ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁷ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

V. SUMMARY OF THE EVIDENCE

Mr. Kuldip Singh, a Member of the Taxpayer, testified as to his opinion that the Subject Property was overvalued. Singh stated that the main residence on the property was uninhabitable and that new drywall and a new roof were not added to the main residence until after the effective tax date of January 1, 2017. He stated that the plumbing, electrical, and septic were not working. Singh testified that later in 2018, the Taxpayer had taken out a burn permit in order to remove the main residence.

Singh argued that the price of \$7,500 paid by the Taxpayer at a foreclosure auction in 2016 should have been deemed an arm's length transaction. Singh admitted, however, that the Taxpayer had financed a loan relating to the Subject Property prior to foreclosure and that the Taxpayer purchased the property at the auction at the price that was owed.

The County Assessor conducted an exterior and interior inspection of the Subject Property on May 10, 2018, taking several photographs of the buildings. The photographs are consistent with Singh's testimony that the Subject Property had been neglected due to non-use for a number of years.

Singh also argued that approximately 32 acres of grassland on the Subject Property were overvalued. However, he offered no evidence to support that argument other than his opinion of value. He stated that the Taxpayer had made no attempts to offer the grassland for rent, and he did not know whether the grassland had fencing around it that could contain cattle for grazing.

Singh offered no evidence that could be relied upon by the Commission to quantify any value of the Subject Property other than the taxable value that was determined by the County Board. Based upon the evidence received, the Commission cannot conclude that the Taxpayer has overcome the presumption in favor of the determination of taxable value made by the County Board.

VI. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its

determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the appeal of the Taxpayer should be denied and the decision of the County Board should be affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Kimball County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 is affirmed.
2. The taxable value of the Subject Property for tax year 2017 is \$64,005.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Kimball County Treasurer and the Kimball County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2017.
7. This Decision and Order is effective for purposes of appeal on August 8, 2018.¹⁸

Signed and Sealed: August 8, 2018

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

¹⁸ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.